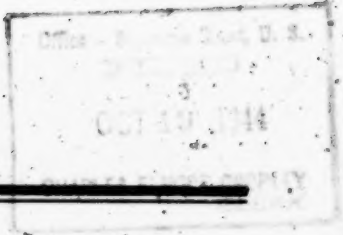


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No. 296

IN THE
Supreme Court of the United States

OCTOBER TERM, 1944

PANHANDLE EASTERN PIPE LINE COMPANY, ILLINOIS NATURAL
GAS COMPANY, AND MICHIGAN GAS TRANSMISSION CORPORA-
TION, PETITIONERS

v.

FEDERAL POWER COMMISSION, CITY OF DETROIT, MICH.,
COUNTY OF WAYNE, MICH., MICHIGAN CONSOLIDATED GAS
COMPANY, AND MICHIGAN PUBLIC SERVICE COMMISSION.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE EIGHTH CIRCUIT.

PETITIONERS' REPLY TO BRIEF OF CITY OF CLEVELAND,
AMICUS CURIAE.

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INTRODUCTORY STATEMENT

On September 29, 1944, the City of Cleveland, Ohio, as
amicus curiae, filed its brief herein suggesting (P. 2) that

• • • the questions upon the merits which the petition
for a writ of certiorari seeks to raise are not presented
for review by the Supreme Court of the United States
for the reason that the United States Circuit Court of
Appeals for the Eighth Circuit was without jurisdiction
over the subject matter of the controversy.

This reply of Petitioners¹ to that brief is filed pursuant to notice dated October 7, 1944, that the Court desires additional briefs from the parties directed to the question raised by the City of Cleveland.

Since Petitioners sought review in a circuit court of appeals of the United States, we think the challenge to the locality of the review proceedings presents a question of venue only and not a question of jurisdiction over the subject matter,² even though the litigation be regarded as a suit against the United States.³ In either view, however, the statutory requirements are satisfied if, as a matter of fact, Petitioners had their principal place of business within the Eighth Circuit at the time that the petition for review of the order of the Commission was filed.⁴

This issue of fact was not raised at any time in the proceedings below, presumably, because it was common knowledge among all interested parties that Petitioners had their principal place of business at 1221 Baltimore Avenue, Kansas City, Missouri. Michigan Consolidated Gas Company alleges in its petition of intervention that Panhandle Eastern is a corporation organized under the laws of Delaware "with principal place of business at Kansas City, Mis-

¹ Herein we refer to Panhandle Eastern Pipe Line Company as "Panhandle Eastern", Michigan Gas Transmission Corporation as "Michigan Gas", and Illinois Natural Gas Company as "Illinois Natural". The three are referred to collectively as "Petitioners". The Federal Power Commission is referred to as "the Commission".

² *Freeman v. Bee Machinery Company*, 319 U. S. 448, 453; *Neir Company v. Bethlehem Corporation*, 308 U. S. 165, 167-168; *Terminal R. Assn. v. Kimbrel* (C.C.A. 8), 105 F(2) 262, 264.

³ *Peoria Ry. Co. v. United States*, 263 U. S. 528, 535.

⁴ Section 19(b) of the Natural Gas Act provides, "Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, . . ." (Italics supplied.)

souri" (R. 7039). That allegation is not merely a conclusion of law; it is likewise the statement of a fact, made by one of the parties to this case which had dealt with Panhandle Eastern over a period of many years and which was in a position to know the location of its principal place of business. Its contract for the purchase of gas from Panhandle Eastern provides that any notice, request, demand, statement, or bill provided for in the agreement shall be mailed to Panhandle Eastern at Kansas City, Missouri (R. 6918).

Had the issue been raised in the court below, all pertinent evidence could have been adduced and incorporated into the record in concise form. Since it is raised for the first time here, we must rely upon such relevant evidence as appears incidentally in the record and upon matters of which the Court will take judicial notice.

PETITIONERS HAD THEIR PRINCIPAL PLACE OF BUSINESS AT KANSAS CITY, MISSOURI, WHEN THE PETITION FOR REVIEW WAS FILED.

The City of Cleveland points out that each of Petitioners was a separate corporate entity at the time that the proceedings were pending before the Commission and to the fact that the pipe lines of Michigan Gas and those of Illinois Natural and the customers served thereby were located outside the territorial limits of the Eighth Circuit. Upon these facts the negative argument is made that Petitioners did not have their principal place of business in the Eighth Circuit. It does not refer the Court to any evidence showing that the place where the actual business of Petitioners was transacted and conducted was elsewhere than at the offices in Kansas City, Missouri. It ignores completely the fact that, after Michigan Gas was acquired by Panhandle Eastern February 6, 1942, (R. 21, Note-12) the operations of Petitioners were conducted as one business.

The Commission found as a fact (Finding No. 5, R. 40)

(5) Panhandle Eastern, Michigan Gas, Illinois Natural hereinafter referred to collectively as "the respondents") and Indiana Gas Distribution Corporation (hereinafter referred to as "Indiana Gas") are under common control and ownership, and are operated as a single, inter-connected and integrated system for the production, purchase, gathering, transportation, sale and delivery of natural gas;

At the time the petition for review was filed, November 18, 1942, (R. 1) the integrated system was conducted in all of its business and operating phases from the offices maintained by Petitioners at 1221 Baltimore Avenue, Kansas City, Missouri.

In the "Directory of Gas Utilities in the United States" for 1942, published by the Federal Power Commission, Panhandle Eastern is shown to be doing business in Illinois (P. 74), Indiana (P. 93), Kansas (P. 126), Michigan (P. 200), Missouri (P. 228), Ohio (P. 327), and Texas (P. 448). In each instance its address is shown to be 1221 Baltimore Avenue, Kansas City, Missouri. Illinois Natural is shown as having its business address at 1221 Baltimore Avenue, Kansas City, Missouri, and to be controlled by Panhandle Eastern Pipe Line Company through 100% of voting power (P. 71). Michigan Gas is shown as having its business address at 1221 Baltimore Avenue, Kansas City, Missouri, and to be controlled by Panhandle Eastern Pipe Line Company, through 100% of voting power (P. 91). An office at Detroit, Michigan, is also shown (P. 199).

The City of Cleveland refers (Cleveland brief, P. 9) to the testimony of Mr. George S. Young (R. 579) as showing that the business of Michigan Gas was conducted at Detroit. At the time that Mr. Young was testifying, November 17, 1941, (Tr.⁵ 1651, 1664) he was vice-president and

a director of Michigan Gas, which was then owned by Columbia Gas and Electric Corporation and was not under the control of Panhandle Eastern. The record shows that on March 3, 1942, in the course of the taking of testimony, counsel for Panhandle Eastern stated, in response to an inquiry from the Commission's trial examiner, that Mr. Watkins was then in Kansas City arranging for the transfer from Detroit to Kansas City of all of the accounting records of Michigan Gas (Tr. 8814). Mr. Young was not retained as an officer or director of Michigan Gas after that company was acquired by Panhandle Eastern February 6, 1942.

The Directory of Gas Utilities in the United States for 1942, shows that, with respect to Petitioners, Mr. Creveling was President of all three corporations, Mr. Neuner was Vice-President of all three corporations, Mr. Watkins was Secretary and Controller of all three corporations, Mr. Sperry was Treasurer of all three corporations, Mr. Paxton was Assistant Secretary and Assistant Treasurer of all three corporations, and Mr. Jellings was Assistant Treasurer of all three corporations.

The record discloses that Mr. Neuner, as Vice-President in Charge of Operations, was located at 1221 Baltimore Avenue, Kansas City, Missouri (R. 4969), and that Mr. Paxton, who was also head of the Accounting Department (R. 1052), and Mr. Jellings were located at 1221 Baltimore Avenue, Kansas City, Missouri (R. 4969). Mr. Watkins testified that he spent a vast amount of his time at the Kansas City office (R. 2616).

⁵ The abbreviation "Tr." designates the typewritten transcript of the proceedings before the Commission filed in the Circuit Court of Appeals. Recourse to the transcript is had when the pertinent matter is not in the printed record.

The City of Cleveland makes reference in its brief (Note 1 on P. 7) to the fact that Illinois Natural is the same company, which was the appellant in *Illinois Natural Gas Company v. Central Illinois Public Service Company*, 314 U. S. 498. The record in that case shows (PP. 25-27) that Mr. Neuner testified that he was Vice-President and Chief Operating Officer of Panhandle Eastern and of Illinois Natural, and that both companies had their principal place of business at Kansas City, Missouri.

The City of Cleveland stresses in its brief (PP. 7, 10) the pipe line mileage of Petitioners and the quantities of gas supplied through such pipe lines in the various states outside of the territorial boundaries of the Eighth Circuit. Considering the physical characteristics of the business of transporting natural gas, these facts have very little probative value in determining Petitioners' principal place of business. The principal place of business of a corporation is the place where its business is actually conducted, from which its operations are directed, and at which it holds itself out to do business with the public.⁶ It has been held that, where a corporation conducts its business at a number of places, no one of which is clearly the place where its business is principally conducted, one of such places where a substantial business is transacted and from which general supervision of all of its business is exercised may properly be held to be the principal place of business of such corporation.⁷

Here, the only fair inference to be drawn from the record is that, after February 6, 1942, there was only one place, namely, 1221 Baltimore Avenue, Kansas City, Missouri, at

⁶ *Burdick v. Dillon* (C.C.A. 1) 144 Fed. 737; *Dryden v. Ranger Refining and Pipe Line Company* (C.C.A. 5) 280 Fed. 257; *Colorado Interstate Gas Company v. Federal Power Commission* (C. C.A. 10) 142 F(2) 943, 950-951; *Continental Coal Corp. v. Roszelle Bros.* (C.C.A. 6) 242 Fed. 243, 246.

⁷ *Chicago Bank of Commerce v. Carter* (C.C.A. 8) 61 F(2) 986.

which the business of Panhandle Eastern and its two wholly owned subsidiaries, Illinois Natural and Michigan Gas, was conducted. There is no evidence in the record to indicate that the office at 90 Broad Street, New York, was maintained by Panhandle Eastern for any other purpose than as a convenient meeting place for its directors (seven of whom, out of a total of eight, resided in New York (R. 4969)), and in order that Mr. Gano Dunn, who resided in New York, (R. 4971) might keep in touch with the principal executives of the Company in discharging his responsibility as trustee under a consent decree entered by the United States District Court for the District of Delaware in anti-trust proceedings affecting Panhandle Eastern brought by the United States.⁸

The record is replete with evidence supporting the sworn statement of Mr. J. D. Creveling, (R. 14) President of each of Petitioners, in their petition for review that (R. 6)

Each of petitioners has its principal place of business in Kansas City, Jackson County, Missouri, within the jurisdiction of the Eighth Circuit Court of Appeals.

In addition to the officers mentioned *supra* P. 5, all of the principal department heads with their respective staffs were located at Kansas City. Mr. C. H. M. Burnham, Chief Engineer (R. 101), Mr. C. H. Hinton, Production Engineer (R. 4215), Mr. Oscar William Morton, Rate Engineer (R. 152), and Mr. Rufus M. Smith, Company Geologist (R. 4103) gave testimony to that effect.

When the Commission made its investigation of Petitioners' business, its staff accountants and engineers had to go to Petitioners' place of business at Kansas City in

⁸ These proceedings are fully described in the transcript of record filed in this Court in *Missouri-Kansas Pipe Line Company v. United States, et al.*, 312 U. S. 502. The consent decree appears at page 142 of that record.

order to examine the pertinent records and books of accounts (R. 2515, 3435) and to confer with the officers and persons in charge of the conduct of Petitioners' business (R. 1051, 1053, 1054-1055, 1058). The Bureau of Internal Revenue dealt with Petitioners at their office at Kansas City (R. 5795, 5811).

Mr. R. J. Wallace, who was employed to make a report on the market value of gas leases owned by Panhandle Eastern, had to go to Petitioners' office at Kansas City for access to the necessary records (R. 4190).

The Company's active bank account was in Kansas City (R. 1384; Tr. 4460-4461). All budgets were prepared in the Kansas City office and delivered to the Vice-President in Charge of Operations, Mr. Neuner, by whom they were sent to New York for Board action (R. 1937); and, upon their return, work orders were issued by the Accounting Department at Kansas City (R. 1938).

Although we do not regard the location of transmission lines and volume of distribution in a particular place as controlling or even persuasive, the record discloses that a substantial part of the transmission line and a number of lateral lines are located in the State of Missouri, and substantial volumes of gas were sold to industrial consumers and also to utilities for resale in the State of Missouri (R. 4091-4093, 4293, 4295).

The convenient location of Kansas City as a point from which to carry on Petitioners' business and operations readily appears from an inspection of the map introduced as Chart No. 1 of Exhibit 65 (R. 4559).

Witness Burnham testified (R. 247) that Panhandle Eastern had a private telephone system covering all of its properties west of Kansas City; that, with a completely looped system from Liberal to the Indiana line and greatly

increased loads, the response to pressure increases would be much quicker and would require much closer attention "from the central office in Kansas City"; and that it would be necessary for the Company to extend its telephone system across the state of Missouri and Illinois to connect with each and every compressor station along the line in those states and also the warehouses, "so that we will be in complete communication at all times with the employees and important points of operation on our line east of Kansas City." He stated that the Company was then depending upon the commercial telephone and telegraph lines for communications east of Kansas City but that this service was not entirely satisfactory (R. 248). He said that the Company maintained its gas dispatching office at Kansas City; that the chief dispatcher made certain observations on the existing load on the system; that weather predictions were telegraphed to him with estimates of the requirements of customers on the system; that, on the basis of all of this information, the dispatcher was able to determine when more gas should be turned on in the field and when pressures should be raised over the entire system or at certain points on the system; that the dispatcher then issued instructions to the various compressor stations and to the field headquarters accordingly. He stated that the chief dispatcher at Kansas City had a chart showing, from hourly reports, what the pressures were from time to time at the various points on the system, including points on the Michigan Gas system, which enabled him to see that the pressures responded in accordance with the deliveries required.

The dispatcher and his staff at Kansas City determine, in cases of emergency, which of the customers supplied on an interruptible basis must be shut off or given curtailed deliveries (R. 1986).

The record shows that, although Panhandle Eastern had as its General Counsel a New York lawyer, he was engaged in the general practice and was only called upon for services of an advisory character with respect to general corporate matters and in connection with proceedings before the Securities and Exchange Commission. Full time Company Counsel, Mr. Glenn Clark, whose duties were concerned with the legal phases of the day to day conduct of the corporate affairs, was employed at the offices in Kansas City (R. 3570).

The procedural documents in the nature of pleadings filed on behalf of Panhandle Eastern and Illinois Natural emanated from the Kansas City office and bore the signature of Mr. Clark, who gave his address as 1221 Baltimore Avenue, Kansas City, Missouri. The same is true with respect to Michigan Gas after it was acquired by Panhandle Eastern (R. 7020-7021, 7136, 7140, 7148).

We submit that the pertinent facts establish clearly that Petitioners had their principal place of business at Kansas City, Missouri, within the Eighth Circuit, at the time their petition for review was filed with the United States Circuit Court of Appeals for that circuit.

SECTION 19(b) OF THE NATURAL GAS ACT IS NOT SUSCEPTIBLE OF THE CONSTRUCTION ADVOCATED BY THE CITY OF CLEVELAND.

The City of Cleveland contends that "Even if but one of the three natural-gas companies to which the Federal Power Commission's order relates in this case did not have its 'principal place of business' within the Eighth Circuit, the United States Court of Appeals for the District of Columbia had exclusive jurisdiction and the Eighth Circuit had no jurisdiction over the subject matter." (Cleveland brief, P. 17)

No authority is cited in support of this contention. The exact contrary was held in *Hicks v. National Labor Relations Board, et al.* (C.C.A. 4), 100 F. (2) 804, 805-806; cert. denied 308 U. S. 554, under analogous circumstances and where the statutory provision for court review was almost identical with the provisions of Section 19(b) of the Natural Gas Act. To the same effect is *Standard Oil Company v. National Labor Relations Board* (C.C.A. 8), 114 F. (2) 743, 744. In the latter case, where two corporations affected by an order of the National Labor Relations Board sought review in different circuits, the Court (P. 744) stressed the fact that

One decision, including findings of fact and conclusions of law, was issued by the Board, and it filed one order based upon a single record.

Here, the Commission treated Petitioners as engaged in one integrated business under single ownership, control, management, and operation. It issued one decision, including findings of fact and conclusions of law, and issued one order, based upon a single record, requiring that the gross revenues of the integrated business be reduced in a prescribed amount, without apportioning the burden of such reduction among Petitioners.

In *Federal Power Commission, et al. v. Natural Gas Pipeline Co., et al.*, 315 U. S. 575, the order of the Commission related to two natural-gas companies, Natural Gas Pipeline Company of America and Texoma Natural Gas Company. Review was sought by both companies in the Circuit Court of Appeals for the Seventh Circuit and the case came to this Court on certiorari. Texoma Natural Gas Company neither had any properties nor conducted any of its physical operations within the territorial limits

of the Seventh Circuit. It was a Delaware corporation producing gas only in the State of Texas and transporting that gas through its pipe line to a point in the State of Oklahoma, within the Tenth Circuit, where it was delivered to Natural Gas Pipeline Company.⁹ The Commission treated the combined businesses of the two companies (as it did those of Petitioners here) as one enterprise under substantially common control and ownership. Mr. Chief Justice Stone, writing the opinion for this Court, stressed the unified nature of the entire enterprise and disposed of the case on that basis. He stated (P. 578):

The two companies are engaged in business as a single enterprise. They produce natural gas from their own reserves in the Panhandle gas fields in Texas, and purchase gas produced there by others. They transport the gas by their own pipeline in interstate commerce to Illinois, where they sell the bulk of it at wholesale to utilities, which distribute and sell it for domestic, commercial and industrial uses.

○ The provision of Section 19(b) of the Natural Gas Act that review may be had in "any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business" is clearly for the benefit of "the natural-gas company to which the order relates".¹⁰ The intent of Congress in this respect would, obviously, be defeated if, in the case of an order relating to three natural-gas companies located in different circuits and having their principal places of business in different circuits, all three companies were denied this benefit and were forced to seek review in the Court of Appeals of the District of Columbia. There is no occasion

⁹ *Illinois Commerce Commission v. Natural Gas Pipeline Company of America, et al.*, 2 F.P.C.R. 218, 233-234.

¹⁰ *Peoria R. Co. v. United States*, 268 U. S. 528, 535.

here, however, for the Court to decide this question of statutory construction, since we have demonstrated that all three of the Petitioners had their principal place of business at Kansas City, Missouri, within the Eighth Circuit, at the time the petition for review was filed.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the court below had jurisdiction of the subject matter of this cause and over the parties, and there is no jurisdictional impediment to the granting of the writ of certiorari.

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